

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

FRANK McCLELLAN,

Plaintiff,

-against-

**NOTICE OF
CROSS-MOTION**

**CITY OF RENSSELAER, and,
STEVEN SMITH, Individually and in
his official capacity as Police Officer
of the City of Rensselaer,**

**02-CV-1141
GLS/DRH**

Defendants.

PLEASE TAKE NOTICE, that upon the affidavits of Lee Greenstein, Esq., Frank McClellan and Michelle Cristo, and accompanying Memorandum of Law, and the exhibits 1 through 27 annexed hereto, as well as the pleadings and proceedings heretofore had herein, FRANK MCCLELLAN will move this Court before the Honorable Joseph M. Hood, a visiting District Court Judge for the United States District Court for the Northern District of New York, at a regularly scheduled motion term thereof to be held at the U.S. District Court House in Albany, New York, on the ____ day of _____, 2004, for an Order:

- (1) Granting summary judgment with respect to a determination that Defendant is not entitled to qualified immunity, as a matter of law;
- (2) Granting summary judgment with respect to a determination that defendant is liable for the false arrest and malicious prosecution of Plaintiff on the arrest and prosecution for disorderly conduct (PL 240.20[7]).
- (3) Denying the motion for summary judgment submitted by Defendant Steven Smith in all respects;
- (4) Granting such other and further relief as to his court may deem just and proper.

Dated: Albany, NY
July 12, 2004

LEE GREENSTEIN
Bar Roll #101859
Counsel for Defendant Whitley
600 Broadway
Albany, NY 12207

TO: The Mills Law Firm
Counsel for defendant Smith

Clerk
U.S. District Court